JTH Tax, Inc. v. Whitaker Doc. 50

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE,

Plaintiff,

Civil No. 2:07cv170

v.

KENYA WHITAKER AND EASY SOFTWARE SOLUTIONS, LLC.,

Defendants.

REPLY IN SUPPORT OF MOTION TO DISMISS COUNT III (NEGLIGENT MISREPRESENTATION) AND COUNT V (BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING) OF DEFENDANTS' COUNTERCLAIM

Now comes the Plaintiff and Counterclaim-Defendant, JTH Tax, Inc. d/b/a Liberty Tax Service ("Liberty"), by counsel, and for its Reply in Support of its Motion to Dismiss Counts III & V of Defendants' Counterclaim, states as follows:

The Defendants and Counterclaim-Plaintiffs Kenya Whitaker and Easy Software Solutions, LLC (collectively "Whitaker") filed a Counterclaim against Liberty alleging, among other things, Negligent Misrepresentation and Breach of Implied Covenant of Good Faith and Fair Dealing. Liberty filed a Motion to Dismiss these claims because neither claim is recognized under Virginia law. Whitaker filed an Opposition to Liberty's Motion to Dismiss, and in that Motion, concurs that Virginia law allows neither a claim for Negligent Misrepresentation nor a claim for Breach of Implied Covenant of Good Faith and Fair Dealing. Therefore, both claims should be dismissed. If Whitaker wishes to file a Motion for Leave to Amend, that should be dealt with by separate motion.

Dockets.Justia.com

WHEREFORE, in consideration of the foregoing, Liberty respectfully requests that this Court dismiss Counts III & V of Defendants' Counterclaims for Negligent Misrepresentation and Breach of Implied Covenant of Good Faith and Fair Dealing.

Respectfully submitted,

JTH Tax, Inc. d/b/a Liberty Tax Service

By: ________________/s/______________________
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of September 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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